IN THE

SUPREME COURT OF THE UNITED STATES.

No. 597.

OCTOBER TERM, 1965.

JAMES E. MILLS,
Defendant, Appellant,

v.

STATE OF ALABAMA,
Plaintiff, Appellee.

On Appeal from the Supreme Court of Alabama.

BRIEF

Of Alabama Press Association and Southern Newspaper Publishers Association, as Amici Curiae, in Support of Appellant.

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INTEREST OF THE AMICI CURIAE.

Alabama Press Association represents Alabama's daily and weekly newspapers. Southern Newspaper Publishers Association represents the major newspapers in the

Southeast. The Associations appear as Amici Curiae with the consent of the parties.

The newspapers which these Associations represent have a vital and immediate concern with the preservation of the freedoms of speech and press. These newspapers find that the decision of the Alabama Supreme Court in this case threatens their guaranteed right—and their professional duty—to make fair comment on the news.

STATEMENT OF THE CASE.

On November 6, 1962, Birmingham, Alabama, held an election to determine whether to retain its commissioner form of government or to adopt a mayor-council or manager-council form of government (R. 6, 7). The day before the election one of the commissioners announced that he was instructing City employees not to give out news to either of the City's daily newspapers (R. 2). This had a double effect upon the Birmingham Post-Herald, the morning paper. First, the announcement, coming only hours before the election, gave added persuasiveness to the Post-Herald's editorial policy in favor of a change of government. Secondly, the announcement cut off a major source of local news.

The next edition to be published was that of the morning of November 6—election day. Those who bought that issue and opened it to the editorial page found appellant's editorial (R. 2, 3). The editorial complained about the news blackout and urged the voters to repudiate the commission—which they did, overwhelmingly. It is this editorial which the State claims constituted electioneering or solicitation of vote on election day, contrary to Code of Alabama, T. 17, § 285. The text of the editorial (R. 2, 3) is as follows:

"Do We Need Further Warning?

"Mayor Hanes' proposal to buy the votes of city employees with a promise of pay raises which would cost the taxpayers nearly a million dollars a year was enough to destroy any confidence the public might have had left in him.

"It was another good reason why the voters should vote overwhelmingly today in favor of Mayor-Council government.

"Now Mr. Hanes, in his arrogance, proposes to set himself up as news censor at City Hall and 'win or

lose' today he says he will instruct all city employees under him to neither give out news regarding the public business with which they are entrusted nor to discuss it with reporters either from the Post-Herald or the News.

"In other words, it is Mr. Hanes' plan to give to the people of Birmingham only the news he wants them to have and only in the light in which he sees fit to present it.

"The mayor makes a mistake, however, if he thinks he can black out news from City Hall. He is mistaken, too, if he thinks the citizens of Birmingham will let him get away with so brazen an attempt to deny them ready access to what they have a right to know about all that goes on at City Hall.

"Do the people of Birmingham need a more serious warning?

"If Mayor Hanes displays such arrogant disregard of the public's right to know on the eve of the election what can we expect in the future if the City Commission should be retained?

"Let's take no chances.

"Birmingham and the people of Birmingham deserve a better break. A vote for Mayor-Council government will give it to them."

A criminal complaint was made (R. 1, 5), to which appellant demurred (R. 10). His demurrers were all addressed to the constitutionality of the statute. The trial judge sustained the demurrers (R. 10) and the State appealed to the Alabama Supreme Court, which found the statute constitutional, went on to find that appellant's editorial violated the statute, and remanded the case to the trial court (R. 24). The Supreme Court of Alabama denied rehearing (R. 38).

Appellant then submitted his Jurisdictional Statement to this Court pursuant to 28 U. S. C. § 1257 (2). He con-

tended, and the Alabama Press Association and Southern Newspaper Publishers Association filed a brief supporting his contention, that there was in effect a final judgment. This contention is based upon the fact that the Alabama Supreme Court has held not only that the statute is constitutional, but that defendant's editorial violated its terms. The publication of the editorial being not disputed, appellant has no defense upon remand to the trial court.

This Court deferred consideration of the jurisdictional question until a hearing on the merits (R. 42).

SUMMARY OF ~~JUDGMENT~~ Argu.

Code of Alabama, T. 17, § 285, prohibits all "electioneering" on election day. Violation of its terms may result in punishment including six months at hard labor. The statute contains no requirement of specific intent. It clearly touches upon First Amendment freedoms.

A statute combining these factors—criminal offense, harsh punishment, no scienter requirement, and restriction of speech—must be clearly drawn and must be applied only to cases clearly within its terms.

The Alabama Supreme Court in this case found that appellant's editorial, written in his capacity as editor of a newspaper, and fairly commenting on current news, constituted such "electioneering". We submit that the terms of the statute are so indefinite as not fairly to warn appellant that his act fell within its terms; thus the decision of the Alabama Supreme Court denies him due process of law as guaranteed by the Fourteenth Amendment.

We further submit that this statute, construed to forbid fair editorial comment on current news in the regular course of publishing a newspaper, unconstitutionally restricts the freedom of the press as guaranteed by the First and Fourteenth Amendments against state abridgment. The statute is not saved by characterization as a reasonable attempt to assure pure election practices, for whatever value there may be in silence on election day is far outweighed by the statute's tendency to invite the making of last minutes charges on election eve, to which the victim may not reply, and its effective insulation of public officials from criticism for acts of corruption (such as was here involved) which they may commit on election eve.

ARGUMENT.

I.

Code of Alabama, T. 17, § 285, a Criminal Statute Punishing Speech and Containing No Requirement of Specific Intent, Fails to Meet Constitutional Standards of Statutory Definiteness.

The first part of T. 17, § 285, is clear and is similar to statutes in many states:

> "It is a corrupt practice for any person on any election day to intimidate an elector or any of the election officers; or, obstruct or hinder or attempt to obstruct or hinder, or prevent or attempt to prevent the forming of the lines of the voters awaiting their opportunity or time to enter the election booths. . . ."

The rest of the statute is unique:

> ". . . or to hire or to let for hire any automobile or other conveyance for the purpose of conveying electors to and from the polls; or, to do any electioneering or to solicit any votes or to promise to cast any votes for or against the election or nomination of any candidate, or in support of or in opposition to any proposition that is being voted on on the day on which the election affecting such candidates or propositions is being held."

Although the statute contains no requirement of intent, violation of its terms may result in punishment including six months at hard labor. T. 17, § 332, Code of Alabama. Although the statute was almost fifty years old it had never been construed in any reported decision, until the decision of the Alabama Supreme Court in this case.

Incredible as it may seem, the language about hiring any automobile apparently makes it a crime for one to take a taxi to the polls and makes it a crime for a cab driver to take one there. While this clause is not here directly in question we note it as evidence of the carelessness and thoughtlessness with which the Alabama Corrupt Practice Act was drafted, and as evidence of the difficulty one has in deciding just what the statute prohibits.

James E. Mills is accused of violating the last clause in the statute, making it a corrupt practice "to do any electioneering or to solicit any votes" on election day.

Addressing itself to the appellant's claim of vagueness, the Alabama Supreme Court in this case simply held (R. 31): "There can be no sort of doubt that the editorial distributed on the election date violates the Corrupt Practice Act of soliciting votes or electioneering on election day." This summary treatment of a constitutional issue ignores the fact that the editorial was simply a direct journalistic response to a policy statement made by an elected official. It ignores the fact that the editorial is addressed only to those who chose to buy the paper, turn to the editorial page, and read. It ignores the fact that the appellant was merely doing what he saw as his duty to publish fair comment on the news. It ignores the fact that defendant had no intent whatsoever of committing a corrupt practice.

In **United States v. L. Cohen Grocery Co.**, 255 U. S. 81 (1920), this Court found the words "unjust or unreasonable rate or charge" in a criminal statute to be unconstitutionally vague. The Court noted at p. 88 that the language "leaves open . . . the widest conceivable inquiry, the scope of which no one can foresee, and the result of which no one can foreshadow or adequately guard against." Surely this is equally true of a statute

prohibiting "electioneering", when that word is construed to include a newspaper editorial.

In **Connally v. General Construction Co.**, 269 U. S. 385 (1925), the Court held the phrase "not less than the current rate of per diem wages in the locality where the work is performed" violative of the Fourteenth Amendment, since it cannot be determined with any degree of certainty what is a "current wage" and what is a "locality". The Court said at p. 391: "That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement. . . ."

Winters v. New York, 333 U. S. 507 (1948), considered a statute prohibiting publications made up of accounts of "criminal news, police reports, or accounts of criminal deeds, or pictures, or stories of deeds of bloodshed, lust or crime." The Court, finding the statute unconstitutionally vague, stated:

> "It is settled that a statute so vague and indefinite in form and as interpreted, as to permit within the scope of its language the punishment of incidents fairly within the protection of the guarantee of free speech is void, on its face, as contrary to the Fourteenth Amendment."

Smith v. California, 361 U. S. 147 (1959), considered a Los Angeles ordinance which made it unlawful to possess any obscene or indecent book in any place where books are sold or kept for sale. The ordinance had been construed as containing no requirement of intent. In an opinion by Justice Brennen the Court held that the failure to require scienter had such a tendency to inhibit constitutionally protected expression that the ordinance was unconstitutional. The opinion notes the doctrine of **Thornhill v. Alabama**, 310 U. S. 88 (1940), striking down the entirety of a statute restricting First Amendment free-

doms, regardless of whether the statute may have some clear core of meaning. The opinion in **Smith** stressed the high standards of clarity required of a statute inhibiting speech and containing no requirement of scienter. We submit that just as fear of prosecution for possessing an obscene book can thwart trade in literature, so does fear of prosecution under the Alabama Corrupt Practice Act thwart the news media in Alabama, including the Associations submitting this brief, in pursuit of their professional duty and their constitutionally protected right to make fair comment on the news.

In the recent case of **Cramp v. Board of Public Instruction**, 368 U. S. 278 (1961), the Court struck down a Florida statute requiring an oath that "I have not and will not lend my aid, support, advice, counsel or influence to the Communist Party." Justice Stewart pointed out that "counsel" might include a lawyer representing a communist, and that "support" might include a journalist defending the constitutional rights of communists.

We urge the Court to consider in like vein whether, with respect to the statute here in question, the billboard which stays up on election day is "electioneering"; whether the husband discussing the candidates at breakfast with his wife is "electioneering"; whether the simple injunction "get out and vote" is electioneering; whether election day begins at midnight, dawn, or when the polls open; and whether it ends at dusk, when the polls close, or at midnight. Consider whether a New York newspaper published the day before election day and arriving in Alabama on election morning is subject to the restriction placed on The Birmingham Post-Herald by the decision of the Alabama Supreme Court in this case, and whether an Alabama broadcasting station must censor all network programming on election day for fear that it might include some comment on an issue or candidate. This catalog of absurdities (not to stress the remarkable possi-

bilities under the language prohibiting the hiring of automobiles), like Justice Stewart's catalog in **Cramp**, supra, makes it clear that this statute, like that one "forbids . . . the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." **Connally v. General Construction Co.**, supra.

II.

Code of Alabama, T. 17, § 285, as Applied in This Case, Unconstitutionally Restricts the Freedom of the Press as Guaranteed by the First and Fourteenth Amendments Against State Abridgment.

The decision of the Alabama Supreme Court in this case effectively silences Alabamans from making fair comment on candidates or issues before the electorate on election day, even if such comment be prompted by a current news event involving such candidate or issue. This means that if a candidate for office should commit a crime on election eve, neither the electorate nor the news media may criticize him for it on election morning. It apparently means that if one candidate were to appear on television just minutes before election day and vilify his opponent, the opponent could not appear immediately thereafter and defend himself. This decision puts upon the news media at election time the impossible burden of drawing a line between news and comment on news, and requires them to stop short of that line. In 1962, the year when appellant wrote the editorial with which he is here charged, there were five general elections in Birmingham, Alabama, to which the statute in question presumably applied. There were as well many other local elections in Alabama communities to which appellant's paper is sent. Apparently the statute applies to all these days.

We have reviewed the decisions of this Court and of state courts involving corrupt practice acts and we have

reviewed the election laws of the fifty states. Thirty-seven[1] states prohibit certain or all campaigning within a strictly limited geographical area during election day—typically the prohibition extends 100 feet from the polling places. Four states prohibit such activity only within a polling place.[2] Three states appear to have no such law at all.[3] Florida has the typical 100 foot prohibition but also forbids distribution of literature "against any candidate" on election day.[4] North Dakota,[5] Montana[6] and

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[1] Alaska Statutes § 15.65.010; Arizona Revised Statutes § 16-902 and § 16-903; Arkansas Statutes § 3-1414 and § 3-1415; California Code § 14211 and § 14212; Colorado Revised Statutes Ch. 49, Art. 21, § 27; Connecticut Gen. Stat. T. 9, § 236; Georgia Code § 34-1307; Idaho Code § 18-2318; Illinois Anno. Stat. § 19-2.1; Indiana Stat. Anno. § 29-5940; Iowa Code T. IV, § 49.107; Kansas Stat. Anno. § 25-1719; Kentucky Rev. Stat. Anno. § 118.330; Louisiana Stat. Anno. § 1534; Maine Rev. Stat. T. 21, § 892; Massachusetts Gen. Laws Ch. 54, § 65; Michigan Stat. Anno. § 6-1931; Minnesota Stat. Anno. § 211.15; Mississippi Code § 3166; Missouri Stat. Anno. § 129.730 and § 129.840; Nebraska Rev. Stat. § 32-1221; Nevada Rev. Stat. § 293.590 and § 293.592 New Jersey Stat. Anno. § 19:34-6 and § 19:34-15; New Mexico Stat. § 3-8-1 and § 3-3-20(20); New York Election Law § 193; North Carolina Gen. Stat. § 163-165; Ohio Rev. Code T. 35, Ch. 3501.35; Oklahoma Stat. Anno. T. 26, § 436; South Carolina Code § 23-658.1; South Dakota § 16.1209; Texas Civ. Stat. Anno. Art. 8.14, 8.27; Utah Code Anno. § 20-13-17; Virginia Code § 24-188; Washington Rev. Code § 29.51.030; West Virginia Code Ch. 3, Art. 7, § 156(7); Wisconsin T. 2, § 12.64; Wyoming § 22.325(13).

[2] Delaware Code Anno. T. 15, § 4949 and § 5120; New Hampshire Rev. Stat. Anno. § 59:125; Pennsylvania Stat. Anno. T. 25, § 3060; Vermont Stat. Anno. T. 17, § 1972.

[3] Hawaii, Rhode Island and Tennessee.

[4] Florida Stat. Anno. § 104.35 and § 104.36. Florida also makes it unlawful to "publish or circulate or cause to be published or circulated any charge or attack against any candidate unless . . . served upon the candidate at least eighteen days prior to the day of election. . . ." Fla. Stat. Anno. § 104.34. In **Ex Parte Hawthorne,** 116 Fla. 608 (1934), the Florida Supreme Court held the statute inapplicable to campaign speeches and to newspaper publication of such speeches.

[5] North Dakota Cent. Code, § 60-20-19.

[6] Montana Revised Code, § 94-1453.

Oregon,[7] using almost identical language forbid all persons from "asking, soliciting, or in any manner trying to induce or persuade any voter on an election day to vote for or refrain from voting for any candidate."[8] In each of these three states, the punishment for the first offense is a fine of not more than $100.00

By contrast, Alabama seems to be unique in making it a crime "to hire or let for hire any automobile or other conveyance for the purpose of conveying electors to and from the polls," and in making it a crime "to do any electioneering" on election day. Where violation of the law in Oregon, North Dakota or Montana may result in a $100.00 fine, in Alabama the unwary may find himself sentenced to six months at hard labor for his first offense.

This Court's vigorous protection of First Amendment freedoms began with Justice Holmes' opinion in **Schenck v. United States**, 249 U. S. 47 (1919), which established the "clear and present danger" test, and with **Gitlow v. New York**, 268 U. S. 652 (1925), where the Court held that the First Amendment freedoms are among the fundamental liberties protected by the due process clause of the Fourteenth Amendment from impairment by the states. In **Thornhill v. Alabama**, supra, the Court held that a statute which restricts First Amendment freedoms will be tested on its face, and is not saved by being applied narrowly. That opinion contained a sentence at p. 101 which might be adopted without change to the case now before the Court:

> "The freedom of speech and of the press guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment."

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[7] Oregon Revised Statutes, § 260.350.

[8] The texts of these three statutes are set out in the Appendix.

The right of the people to comment on public officials was upheld recently and clearly in **New York Times Company v. Sullivan,** 376 U. S. 254 (1964), which held that honest misstatement of fact concerning official conduct was privileged speech, actionable only upon a finding of actual malice.

This, then, is the national commitment to the value of the First Amendment freedoms. This commitment, as clearly expressed by the decisions of this Court, is far different from what the Alabama Supreme Court, in its opinion in this case, held it to be (R. 31):

> "This Court holds in accordance with the great weight of authority that a law cannot be held to be invalid because unreasonable, unless and until it appears beyond reasonable controversy that it unnecessarily impairs to the point of practical destruction a right safeguarded by the Constitution. As has already been pointed out, the law under consideration lies within the police power field and **impairs only the right of free speech,** which includes the right to write and publish one's views." (Emphasis added.)

The State of Alabama suggests that the State has an overriding interest in the purity of elections, and that fair comment on the news is such a clear and present danger to purity of elections that the statute paints with a justifiably broad brush. In making this claim, the State stresses the existence of the three somewhat similar (though demonstrably narrower and less punitive) statutes in Oregon, North Dakota and Montana. Ironically, this points up the fact that forty-six of our states do not so harshly restrict the free flow of ideas, and apparently suffer no great disruption of the election process thereby.

The State seems to contend that the electoral process, like the judicial process, is not to be conducted in the context of the market place of ideas; but that, like a trial,

it should be conducted according to rules, free from outside pressures. The State also stresses the need to prohibit what it calls "last minute charges" which one political faction might make and which its opposition would have no chance to refute if no artificial deadline on speech were created. We shall attempt to analyze these contentions.

As to the analogy of the electoral process to the judicial, we note first that the analogy is false and secondly that, even with respect to comments on the judicial process, decisions of this Court have very narrowly drawn the permissible limits of restriction on First Amendment freedoms. Legal trials, as Justice Black observed in **Bridges v. California**, 314 U. S. 252 (1941), must turn on evidence and argument presented in open court; for judge and jury to be subjected to prejudicial statements in the press before and during the trial might very well make it impossible for the case to be tried solely on what is disclosed in the courtroom. But surely a major premise of the election process is that there are to be no rules of evidence. Rather, the electorate should be caught in the cross tides of opinion and should feel free to speak its mind freely on the issues without fear of restraint or punishment.

Bridges v. California, supra, certainly recognized this distinction: "Legal trials are not like elections, to be won through the use of the meeting hall, the radio, and the newspaper," stated Justice Black at p. 271. Yet even on the facts in that case, involving press comment on pending litigation, the Court refused to silence the press.

We noted that the State stresses the "last minute charges" argument and claims that the statute is a legitimate attempt to eliminate this problem. The State thus attempts to bring this case within the aegis of Justice Brandeis' language concurring in **Whitney v. California**, 274 U. S. 357 (1927):

> "If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence. Only an emergency can justify repression" (p. 377).

This was said in the context of a case involving incitement to sabotage and in that context the observation is certainly valid. But that statement, and the notion of there being no time to answer, has no place in the context of electioneering, for even if the State were to cut off speech a **week** before the election, someone would have the unanswered last word. Moreover, such an artificial prohibition on speech, whether it be a day or a week, is an open invitation for acts of corruption (like that which the defendant in this case criticized) and for otherwise answerable charges against the opposition. If no such artificial deadline is imposed, then at least the corruption can be denounced, or the false charge refuted, during the day of the election and thus reach those who have not yet voted. In other words, **an artificial deadline on speech at election eve simply assures that he who has the last word before the curfew on freedom will influence ALL the electorate.** To allow the normal flow of news and ideas during election day makes it impossible for anyone to have the last word as to **all** the voters, since the polls stay open many hours. Thus the statute demonstrably makes worse the real or pretended evil it seeks to cure. It serves no purpose, and it creates a statewide curfew on a sort of speech which our society highly regards.

We close this brief by inviting the Court's attention to **United States v. C. I. O.**, 335 U. S. 106 (1948), which will no doubt be cited by both parties in their briefs and which is perhaps closer to this case than any other which has come to the Court.

Section 313 of the Federal Corrupt Practices Act forbids labor unions from making any "expenditure in con-

nection with any election . . ." The CIO newspaper supported a Congressional candidate and the union spent money to distribute the paper. Justice Reed, for four members of the Court, felt that on the facts there was no such "expenditure." Justice Rutledge, also for four members of the Court, felt that there had been an "expenditure," and viewed the statute as an unconstitutional abridgment of First Amendment freedoms.

While the construction placed on the state statute in our case by the Alabama Supreme Court prohibits the Court here from avoiding the constitutional issue by reading "electioneering" as narrowly as Justice Reed read "expenditure", the Court here can find that the Alabama statute, construed as it has been to include a newspaper editorial, is so vague as to deny due process. This is the position this brief takes in Proposition I. But if the Court here finds that the statute fairly warned the press that an editorial could be "electioneering," as Justice Rutledge found that it could be an "expenditure," then surely the Court must here adopt the position Justice Rutledge took in **CIO**. That opinion came directly to grips, in language we cannot match, with the supposed conflict between freedom of expression and purity of elections.

At p. 140 Justice Rutledge noted that a legislative intrusion upon First Amendment freedoms has no presumption of validity. "The presumption rather," he stated, "is against the legislative intrusion into these domains." He noted that such a statute must be narrowly drawn to meet a precise evil, and he continued:

> ". . .[T]he conduct proscribed must be defined specifically so that the person or persons affected remain secure and unrestrained in their rights to engage in activities not encompassed by the legislation. Blurred sign-posts to criminality will not suffice to create it" (p. 142).

Coming to the nub of the case—the supposed conflict between election purity and free speech—he continued:

> "The most complete exercise of those rights is essential to the full, fair and untrammeled operation of the electoral process. To the extent they are curtailed the electorate is deprived of information, knowledge and opinion vital to its function (p. 144).
>
> * * * * * * * *
>
> "A statute which, in the claimed interest of free and honest elections, curtails the very freedoms that make possible exercise of the franchise by an informed and thinking electorate, and does this by indiscriminate blanketing of every expenditure made in connection with an election, serving as a prior restraint upon expression not in fact forbidden as well as upon what is, cannot be squared with the First Amendment" (p. 155).

In his book **The Right of the People,** Justice Douglas said, pp. 31-32:

> "When it comes to elections there is room, of course, for laws penalizing corrupt practices. Amounts contributed to candidates may be controlled; disclosure of the person or group financing a candidate can be required; and many other campaign activities can be regulated. But at times the regulation has gone further. Efforts have been made to place restrictions on the amount which certain groups could expend . . . The argument has been that if a group spends beyond a certain amount it is exerting an 'undue' influence on the community . . .
>
> "If it is only necessary that this influence be labelled 'undue' to serve as a justification for silencing any person or group, the guarantees of the First Amendment are without substance. **Then the newspaper publisher may be forbidden to express his**

political views on the editorial pages of his newspaper . . ." (Emphasis added.)

That day has come. Before this Court stands the editor of a daily newspaper, threatened with six months at hard labor for writing on his editorial page "Birmingham and the people of Birmingham deserve a better break. A vote for Mayor-Council government will give it to them." Surely, in a free society, such a statement may not be made a crime.

CONCLUSION.

For the foregoing reasons, the judgment of the Supreme Court of Alabama should be reversed, with direction to dismiss the action.

Respectfully submitted,

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Proof of Service.

I, James C. Barton, attorney for Alabama Press Association and Southern Newspaper Publishers Association,

amici curiae herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 27th day of January, 1966, I served copies of the foregoing Brief upon Kenneth Perrine, Attorney for James E. Mills; upon the State of Alabama, by serving a copy of the same on Earl C. Morgan, Solicitor of the Tenth Judicial Circuit of Alabama, Jefferson County Courthouse, Birmingham, Alabama, Attorney for the State of Alabama, and upon the Hon. Richmond Flowers, Attorney General of the State of Alabama, Montgomery, Alabama; by mailing a copy in a duly addressed envelope, first class, postage prepaid, to said parties.

James C. Barton.

James C. Barton.

APPENDIX.

Constitutional and Statutory Provisions Involved.

Constitution of the United States.

Amendment I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

* * * * * * *

Amendment XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Code.

§ 1257. State courts; appeal; certiorari.

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929.

Code of Alabama, 1940, T. 17.

§ 285. Corrupt practices at elections enumerated and defined.—It is a corrupt practice for any person on any election day to intimidate or attempt to intimidate an elector or any of the election officers; or, obstruct or hinder or attempt to obstruct or hinder, or prevent or attempt to prevent the forming of the lines of the voters awaiting their opportunity or time to enter the election booths; or to hire or to let for hire any automobile or other conveyance for the purpose of conveying electors to and from the polls; or, to do any electioneering or to solicit any votes or to promise to cast any votes for or against the election or nomination of any candidate, or in support of or in opposition to any proposition that is being voted on on the day on which the election affecting such candidates or propositions is being held. (1915, p. 250.)

§ 332. Corrupt practice in election or primary election.—Any person or persons who do any act defined or declared to be a corrupt practice under the election or primary election laws of this state, or who wilfully fails or refuses to do any act required of such person under this chapter, relating to the corrupt practice law of this state,

shall be guilty of a misdemeanor, and, on conviction, must be fined not more than five hundred dollars, and may also be imprisoned in the county jail or sentenced to hard labor for the county for not more than six months at the discretion of the court trying the case. (1915, p. 250.)

Montana Revised Code.

94-1453. **Solicitation of votes on election day.** It shall be unlawful for any person at any place on the day of any election to ask, solicit, or in any manner try to induce or persuade any voter on such election day to vote for or refrain from voting for any candidate, or the candidates or ticket of any political party or organization, or any measure submitted to the people, and upon conviction thereof he shall be punished by fine of not less than five dollars nor more than one hundred dollars for the first offense, and for the second and each subsequent offense occurring on the same or different election days, he shall be punished by fine as aforesaid, or by imprisonment in the county jail for not less than five nor more than thirty days, or by both such fine and imprisonment.

North Dakota Cent. Code.

16-20-19. **Electioneering on election day—Penalty.**—Any person asking, soliciting, or in any manner trying to induce or persuade, any voter on an election day to vote or refrain from voting for any candidate or the candidates or ticket of any political party or organization, or any measure submitted to the people, shall be punished by a fine of not less than five dollars nor more than one hundred dollars for the first offense. For the second and each subsequent offense occurring on the same or different election days, he shall be punished by a fine as provided in this section, or by imprisonment in the county jail for not less than five days nor more than thirty days, or by both such fine and imprisonment.

Oregon Revised Statutes.

260.350 Solicitation and persuasion on election day; penalty. (1) No person shall, at any place on the day of any election, ask, solicit or in any manner try to induce or persuade any voter on such election day to vote for or refrain from voting for any candidate, the candidates or ticket of any political party or organization or any measure submitted to the people.

(2) Violation of this section is punishable, upon conviction, by a fine of not less than $5 nor more than $100 for the first offense. The second and each subsequent offense occurring on the same or different election days is punishable, upon conviction, by a fine of not less than $5 nor more than $100, or by imprisonment in the county jail for not less than five nor more than 30 days, or both.